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MUNICIPAL UNIVERSITY—DIRECTORS MAY COMPENSATE TRUST COMPANY FOR COLLECTING INCOME ON INVESTMENTS—BOARD MAY NOT DELEGATE TO TWO OF ITS MEMBERS AUTHORITY TO INVEST AND SELL SECURITIES.

SYLLABUS:

1. *A board of directors of a municipal university may pay compensation to a trust company which such board has appointed as its agent in collecting income on investments owned by the university.*

2. *The board of directors of a municipal university may not delegate to any two of its officers the power to authorize the sale of its securities or the investment or reinvestment of its trust funds.*

COLUMBUS, OHIO, May 23, 1932.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I acknowledge receipt of your communication which reads in part as follows:

“The Board of Directors of the University of Akron, (a municipal university), is negotiating with the First Central Trust Company of Akron to handle the investments representing the permanent endowment and trust funds which it holds. The proposed contract, a copy of which is enclosed, provides that the Trust Company shall collect the interest, income, dividends and profits arising from securities and investments belonging to the University and shall reinvest any proceeds on the order of two officers of the board of directors, for which the Trust Company is to receive compensation of five percent on all income collected.

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Question 1. May a board of directors of a municipal university pay a compensation to a trust company for services in collecting income on investments owned by the university?

Question 2. May the board of directors of a municipal university delegate to any two of its officers the power to authorize the sale and reinvestment of the securities?”

Section 7902, General Code, reads as follows:

“As to all matters not herein or otherwise provided by law, the board of directors of a municipal university, college or institution, shall have all the authority, power and control vested in or belonging to such municipal corporation as to the sale, lease, management and control of the estate, property and funds, given, transferred, covenanted or pledged to such corporation for the trusts and purposes relating thereto and the government, conduct and control of such university, college or institution. It may, unless prohibited by the terms of the trust under which such estate or property is held, sell or lease perpetually or for any less period and with or without a privilege of purchase at a fixed price, any part or the whole of any such estate or property, and on sale, or on an election to purchase under a lease containing a privilege to purchase as afore-

said, convey or transfer such estate or property, and if heretofore any lease with a privilege of purchase at a fixed price shall have been executed and delivered by said board, or any board preceding it in office, for any part or the whole of any such estate or property, said board shall on an election to purchase under such lease convey such premises.

All instruments affecting real estate shall be executed on behalf of the board by such of its officers as it shall designate by resolution, authorizing the execution of such instrument and all deeds so executed shall convey all the title of said board and of such municipal corporation in and to the real estate so conveyed; it may appoint a clerk and all agents proper and necessary for the care and administration of the trust property and the collection of the income, rents and profits thereof; appoint the president, secretaries, professors, tutors, instructors, agents and servants, necessary and proper for such university, college or institution and fix their compensation; provide all the necessary buildings, books, apparatus, means and appliances, and pass such by-laws, rules and regulations concerning the president, secretaries, professors, tutors, instructors, agents and servants, and the admission, government and tuition of students as it deems wise and proper, and by suitable by-laws, delegate and commit the admission, government, management and control of the students, courses of studies, discipline and other internal affairs of such university, college or institution to a faculty which the board appoints from among the professors."

Section 7919, General Code, reads as follows:

"Such board may invest and hold any part of the funds belonging to or set apart for the use of such university, college or institution or to any department thereof, as it from time to time deems proper in bonds of the United States, or of the state of Ohio, or of any municipal corporation of this state, or any county, or school district herein, or in bonds of any other state or territory of the United States or of any municipal corporation, county or school district therein or in real estate or securities approved by it, and may use any funds, including those arising from sales of any property sold under section seventy-nine hundred and two hereof (provided the terms of the trust do not prohibit such use), in the improvement of any real or leasehold estate belonging either to the particular trust of which the property sold was part or to any other trust under its control and management; or in the improvement of any real or leasehold estate set apart for the use of such university, college or institution."

Section 4001, General Code, reads as follows:

"In any municipal corporation having a university supported in whole or in part by municipal taxation all the authority, powers and control vested in or belonging to such corporation with respect to the management of the estate, property and funds given, transferred, covenanted (covenanted) or pledged to such corporation in trust or otherwise for such university, as well as the government, conduct and control of such university shall be vested in and exercised by a board of directors consisting of nine electors of the municipal corporation."

Section 4003, General Code, reads as follows:

“Such directors shall serve without compensation and shall have all the powers and perform all the duties conferred or required by law in the government of such university, and the execution of any trust with respect thereto imposed upon the municipal corporation.”

It will be seen that the full management and control of a municipal university and its property and funds have been left to the wisdom and discretion of its board of directors.

Under the proposed contract, the board of directors of the university of Akron appoints the First Central Trust Company of Akron as its agent to hold the securities and investments of such university and to collect and receive the interest, income, dividends and profit arising therefrom. Under this contract the trust company would have no right to sell any of such securities or investments or to invest or reinvest any of the trust funds, except when instructed so to do by two officers of the board.

Section 7902, General Code, expressly gives the board of directors the right to appoint agents proper and necessary for the care and administration of the trust property and the collection of income, rents and profits thereof, and I am of the view that such an agent may be a trust company as well as an individual, and that the board may pay it such compensation as such board in its discretion may deem proper.

The proposed contract also provides that:

“The Trust Company is authorized and hereby does agree to sell any securities now deposited or hereafter deposited under this agreement, and to invest and reinvest the proceeds of such sales in other securities to be held hereunder upon written instructions of any two (2) officers of the Board, one of whom shall be the Clerk thereof.”

The control and management of the property and funds of a municipal university are conferred upon the directors as a board. The authority so given to the board requires the exercise of discretion and judgment, and in a matter of such importance as the sale of securities and the investment and reinvestment of trust funds, the municipality is entitled to the benefit of the judgment of the entire board rather than of only a few of its members. The board's duties in this respect are of the nature of the duties of a trustee and it is well settled that in the case of a charitable or public trust in which there is more than one trustee, the decision of the majority of the trustees is necessary with respect to powers requiring the exercise of discretion. 11 C. J. 354.

It has also been held that if the act to be done by virtue of a public authority requires the exercise of discretion and judgment, the persons upon whom the authority is delegated must meet and confer together or at least a majority must meet and confer after all have been notified to attend. *Perry vs. Tynen*, 22 Barb. 137.

I am therefore of the opinion that the board of directors of a municipal university may not delegate to any two of its officers the power to authorize the sale of its securities or the investment or reinvestment of its trust funds.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*